

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OTIS LEE CASTLEBERRY #384492,

Petitioner,

File No. 4:05-CV-39

v.

HON. ROBERT HOLMES BELL

JOHN PRELESNIK,

Respondent.

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**MEMORANDUM OPINION AND ORDER**

On February 14, 2013, Magistrate Judge Hugh W. Brenneman, Jr. issued a report and recommendation (“R&R”) recommending that Petitioner Otis Lee Castleberry’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. (Dkt. No. 66.) On February 28, 2013, Petitioner, via a letter to the Court, requested an extension of time to file objections to the R&R due to his late receipt of a copy of the R&R. (Dkt. No. 67.) On March 1, 2013, this Court granted the request and gave Petitioner until March 15, 2013, to file objections. (Dkt. No. 69.) That same day, Petitioner, via a motion this time, filed a second request for an extension of time of 60 additional days on account of his need to obtain legal assistance. (Dkt. No. 68.) Petitioner has also filed an unsigned motion for reconsideration of the Court’s order extending his time to file objections to March 15, requesting that the Court withdraw that order and grant him an extension until April 25, 2013. (Dkt. No. 70.)

Petitioner seeks reconsideration because this Court’s order of extension was based

upon Petitioner's late receipt of the R&R, a justification Petitioner claims was never asserted in his original motion. However, Petitioner's letter explicitly advanced his late receipt of the R&R as the reason for needing an extension: "I am writing do [sic] to the fact that, I need time to make some objection on this ruling. I received this mail like 5 days late." (Dkt. No. 67.)<sup>1</sup> Consequently, Petitioner has not shown a palpable and misleading defect requiring a different result. *See* W.D. Mich. LCivR 7.4(a).

As for the second request for an extension, Petitioner's stated need to obtain legal assistance does not constitute good cause for a further extension of time to file objections. Consequently, the second motion for an extension will be denied.

The extended deadline for filing objections pursuant to the first extension of time has elapsed, and Petitioner has not filed any objections to the R&R. The Court has reviewed the matter and concludes that the R&R correctly analyzes the issues and makes a sound recommendation. Thus, the petition for a writ of habeas corpus will be denied.

Pursuant to 28 U.S.C. § 2253(c), the Court must also assess whether to issue a certificate of appealability to Petitioner. To warrant a grant of a certificate of appealability, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484

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<sup>1</sup>Petitioner's confusion may be related to the fact that his second request for an extension, filed in the form of a motion, asserted the need for legal assistance as the justification for an extension as opposed to the late receipt of the R&R. (*See* Dkt. No. 68.) However, if Petitioner is referring to that motion then his motion for reconsideration is moot because the Court's order only addressed the letter requesting an extension.

(2000). The Sixth Circuit Court of Appeals has disapproved of the issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* Upon review of each claim, the Court does not believe that reasonable jurists would find its assessment of Petitioner’s claims to be debatable or wrong. Thus, a certificate of appealability will be denied as to each claim.

Accordingly,

**IT IS HEREBY ORDERED** that Petitioner’s March 1, 2013, motion for extension of time (Dkt. No. 68) is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner’s motion for reconsideration (Dkt. No. 69) is **DENIED**.

**IT IS FURTHER ORDERED** that the February 14, 2013, R&R (Dkt. No. 66) is **APPROVED** and **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED** as to each claim.

Dated: March 20, 2013

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE